



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N013; FXES11120100000–167–FF01E00000]

Proposed Weyerhaeuser Company Safe Harbor Agreement for the Northern Spotted Owl and Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Weyerhaeuser Company for an Endangered Species Act (ESA) Enhancement of Survival Permit (Permit) for the federally threatened northern spotted owl. The Permit application includes a draft safe harbor agreement (SHA) addressing access to Weyerhaeuser Company lands for the survey and removal of barred owls as part of the Service's Barred Owl Removal Experiment (Experiment) in Lane County, Oregon. The Service also announces the availability of a draft environmental assessment (EA) that has been prepared in response to the Permit application in accordance with requirements

of the National Environmental Policy Act (NEPA). We are making the Permit application, including the draft SHA and the draft EA, available for public review and comment.

DATES: To ensure consideration, written comments must be received from interested parties by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Weyerhaeuser Company draft SHA and draft EA.

- *Internet:* Documents may be viewed and downloaded on the Internet at <http://www.fws.gov/ofwo/>.
- *Email:* barredowlsha@fws.gov. Include “Weyerhaeuser SHA” in the subject line of the message.
- *U.S. Mail:* Betsy Glenn, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave, Suite 100, Portland, OR 97266.
- *Fax:* 503–231–6195.

- *In-Person Drop-off, Viewing, or Pickup:* Call 503–231–6970 to make an appointment (necessary for viewing or pickup only) during regular business hours at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave, Suite 100, Portland, OR 97266. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Betsy Glenn, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone 503–231–6970. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

The Weyerhaeuser Company has applied to the Service for a Permit under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et seq.). The Permit application includes a draft SHA. The Service has drafted an EA addressing the effects of the proposed Permit action on the human environment.

The SHA covers approximately 7,500 acres of forest lands owned by the Weyerhaeuser Company within the treatment portion of the Oregon Coast Ranges Study Area (Study Area) of the Experiment in Lane County, Oregon. The proposed term of the Permit and the SHA is 10 years. In return for permission to access their lands for barred owl surveys and removal in support of the Experiment, the Permit would authorize incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*) as a

result of forest management activities at currently unoccupied spotted owl sites if they become occupied during the term of the Permit.

Background

Under a SHA, participating landowners voluntarily undertake activities on their property to benefit species listed under the ESA (16 U.S.C. 1531 *et seq.*). SHAs, and the subsequent Permits that are issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the landowners that they will not be subject to increased property use restrictions as a result of their conservation efforts. SHAs must provide a net conservation benefit for the covered species.

The assurances provided under a SHA allow the property owner to alter or modify the enrolled property to agreed-upon baseline conditions, even if such alteration or modification results in the incidental take of a listed species. The baseline conditions represent the existing levels of use of the property by species covered in the SHA. SHA assurances are contingent upon the property owner implementing covered activities in accordance with the terms of the Permit and the SHA. The SHA's net conservation benefits must be sufficient to contribute, either directly or indirectly, to the recovery of the covered listed species. Enrolled landowners may make lawful use of the enrolled property during the Permit term and may incidentally take the listed species named on the Permit provided that take does not modify the agreed-upon net conservation benefit to the species.

Application requirements and issuance criteria for Permits for SHAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c). The Service's Safe Harbor Policy (64 FR 32717, June 17, 1999) and the Safe Harbor Regulations (68 FR 53320, September 10, 2003; and 69 FR 24084, May 3, 2004) are available at <http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html>.

Weyerhaeuser's Safe Harbor Agreement

The Weyerhaeuser Company submitted an application for a Permit under the ESA to authorize incidental take of the federally threatened northern spotted owl. The Permit application includes a draft SHA between Weyerhaeuser Company and the Service. The SHA addresses access to support the Experiment (USFWS 2013a) in the Study Area in Lane County, Oregon.

The SHA covers Weyerhaeuser Company lands within the treatment portion of the Study Area. The treatment area is composed of lands owned by many different landowners, including 58 percent Federal lands, 13 percent State lands, and 29 percent private lands. This is the focus of the SHA because this is the area where the removal of barred owls under the Experiment may lead to re-occupancy of sites that are not currently occupied by spotted owls. If barred owl removal leads to the re-occupancy of sites by spotted owls in the absence of this Permit, some restrictions or limitations on forest management activities could occur.

Activities covered under the SHA are forest management activities including but not limited to road use, road construction, road maintenance and the normal management activities associated with managing private forestland for timber production such as

timber harvest, planting, spraying, fertilizing, monitoring, measuring, patrolling and fighting wildfire.

The goal of Weyerhaeuser Company is to manage their timberlands for timber production providing economic, community and stewardship values on a long-term sustained-yield basis while meeting State and Federal regulatory requirements. The Weyerhaeuser Company lands within the Study Area are an important part the company's overall operating plans from both a short-term and long-term perspective. The Weyerhaeuser Company is anticipating significant changes and fluctuations in spotted owl occupancy of well-surveyed sites and areas on or near Weyerhaeuser Company lands in the treatment area after barred owl removal occurs, and potential short-term regulatory impacts to operation plans after barred owl removal in the treatment area occurs.

The purpose of the Weyerhaeuser Company's participation in the Experiment is to demonstrate cooperation with the Service regarding this recovery action while being held harmless and, to the maximum extent allowable under the ESA, ensuring that adjacent landowners are held harmless, by maintaining a reasonable level of certainty regarding the anticipated biological response and subsequent regulatory requirements impacting both forest operations and management during and after the experiment period.

To support the Experiment, the Weyerhaeuser Company will provide researchers access to Weyerhaeuser Company lands to survey for barred owls throughout the Study Area and to remove barred owls located on Weyerhaeuser Company lands within the treatment portion of the Study Area. In addition, the Weyerhaeuser Company will maintain habitat to support actively nesting spotted owls on any reoccupied sites during the nesting season.

The Service's Proposed Action

The Service proposes to enter into the SHA and to issue a Permit to the Weyerhaeuser Company for incidental take of the northern spotted owl caused by covered activities, if Permit issuance criteria are met. The Permit would have a term of 10 years.

Monitoring of spotted owls on Weyerhaeuser Company lands as part of the ongoing spotted owl surveys conducted under the Northwest Forest Plan Monitoring program has yielded a good dataset that may be included in the SHA to establish a baseline for the estimated current occupancy status of each spotted owl site. Any spotted owl sites with a response from at least one resident spotted owl between 2013 and present are considered in the baseline of the SHA. Based on this approach, there are 10 baseline spotted owl sites in the treatment portion of the Oregon Coast Ranges Study Area where Weyerhaeuser Company owns land or has operations, easements or agreements.

The conservation benefits for the northern spotted owl under the SHA arise from the Weyerhaeuser Company contribution to a successful Experiment, specifically as it informs future recovery of the spotted owl. This is accomplished by Weyerhaeuser Company allowing access to their roads and lands for barred owl surveys and, within the treatment area, barred owl removal. In the Study Area landscape of multiple landowners, access to interspersed non-Federal roads and lands for barred owl surveys and, within the treatment area, barred owl removal is important to the efficient and effective completion of the Experiment.

The impact of the increase in non-native barred owl populations as they expand into the range of the spotted owl has been identified as one of the primary threats to the continued existence of the spotted owl. The Recovery Plan for the Northern Spotted Owl includes Recovery Action 29 – “Design and implement large-scale control experiments to assess the effects of barred owl removal on spotted owl site occupancy, reproduction, and survival” (USFWS 2011, p. III-65). The Service developed the Experiment to implement this Recovery Action, and completed an EIS and ROD addressing the Experiment in 2013 (USFWS 2013a and b). The Experiment is being conducted on four study areas, including the Oregon Coast Ranges Study Area. Timely results from the Experiment are crucial for informing the development of a long-term barred owl management strategy that is essential to the conservation of the northern spotted owl.

While the Study Area is focused on Federal lands, it still contains significant interspersed non-Federal lands. To complete the Experiment in the most efficient and complete manner, the Service requires access on non-public roads and the ability to remove barred owls on the non-Federal lands within the treatment area. While the Experiment is possible without access to non-Federal lands, failure to remove barred owls from portions of the treatment area could reduce the power of the Experiment to detect any changes in spotted owl population dynamics resulting from the removal of barred owls and potentially extend the duration of the Experiment. The Service has repeatedly indicated the need to gather this information in a timely manner. Failure to access non-Federal lands could delay the results.

Incidental take of spotted owls under this SHA would likely be in the form of harm from forest operation activities that result in habitat degradation, or harassment

from forest management activities that cause disturbance to spotted owls. Incidental take in the form of harassment by disturbance is most likely to occur near former spotted owl nest sites if they become reoccupied. Harm and harassment could occur during timber operations and management that will continue during the Permit term. The Weyerhaeuser Company will perform routine harvest, road maintenance and construction activities, including rock pit development, spraying and fertilization that may disturb spotted owls.

Net Conservation Benefits to the Northern Spotted Owl

The Weyerhaeuser Company owns lands in the treatment portion of the Oregon Coast Ranges Study Area. Access to the Weyerhaeuser Company lands is important to the efficient and effective completion of the Experiment within a reasonable timeframe. All of the currently occupied spotted owl sites are within the baseline and no take of these sites is authorized under this SHA. If barred owl removal does allow spotted owls to re-occupy sites that are not currently occupied (non-baseline), the Weyerhaeuser Company will be allowed to incidentally take these spotted owls. It is highly unlikely that these sites would ever be re-occupied by spotted owls without the removal of barred owls.

The removal of barred owls on the Study Area will end within 10 years. The Service anticipates that, once released from the removal pressure, barred owl populations will rebound to pre-treatment levels within 3 to 5 years. This is likely to result in the loss of the newly re-occupied spotted owl sites. Therefore, any spotted owl occupancy of these sites is likely to be temporary and short-term.

The SHA allows for the take of spotted owls on 16 non-baseline sites in the treatment area of the Study Area if these sites become reoccupied during the barred owl removal study. Take of non-baseline owl sites that may be reoccupied can result from disturbance from forest management activities or habitat loss. For 7 of the 16 sites, take is anticipated primarily from disturbance. Take resulting from disturbance is temporary, short-term, and only likely to occur if activities occur very close to nesting spotted owls. None of the 48 historic spotted owl site centers in the treatment area occur on Weyerhaeuser Company lands, and only 3 site centers are close enough that forest management activities on Weyerhaeuser Company lands could result in some disturbance of the sites if these site centers were reoccupied.

For the remaining 9 sites, take of spotted owls may occur as a result of disturbance or habitat removal if these sites become re-occupied by spotted owls during the Experiment. Loss of habitat has longer term effects, and the degree to which it may affect the study depends on the amount of potential habitat loss compared to the condition of the spotted owl site. The Weyerhaeuser Company is a minor owner on seven of these sites with less than 10 percent of the land ownership and less than 5 percent of the remaining suitable habitat on these seven sites. Federal lands contain the majority of the remaining suitable spotted owl habitat on these seven sites. Thus, even if all non-baseline spotted owl sites are re-occupied by spotted owls, and the Weyerhaeuser Company removed all spotted owl habitat remaining on their lands within these sites under their Permit, many of these sites are likely to remain viable at some level as a result of habitat remaining on adjacent ownerships.

The primary conservation value of the Barred Owl Removal Experiment is the information it provides on the efficacy of removal as a tool to manage barred owl populations for the conservation of the spotted owl. This information is crucial to the development of a long-term barred owl management strategy that is essential to the conservation of the northern spotted owl. In this landscape of multiple landowners that exists within the Study Area, access to interspersed non-Federal lands is important to the efficient and effective completion of the Barred Owl Removal Experiment within a reasonable timeframe. Under the Weyerhaeuser Company SHA, researchers would have access to their roads and lands for barred owl surveys and, within the treatment area, barred owl removal. This access contributes significantly to the conservation value of the Experiment. Thus, the take of spotted owls on the temporarily reoccupied sites is more than offset by the value of the information gained from the experiment and its potential contribution to the timely development of a long-term barred owl management strategy. For these reasons, the Service finds this SHA advances the recovery of the spotted owl.

National Environmental Policy Act Compliance

The development of the draft SHA and the proposed issuance of a Permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA). We have prepared a draft EA to analyze the impacts of Permit issuance and implementation of the SHA on the human environment in comparison to the no-action alternative.

Public Comments

You may submit your comments and materials by one of the methods listed in the ADDRESSES section above. We request data, new information, or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party on our proposed Federal action. In particular, we request information and comments regarding the following issues:

1. The direct, indirect, and cumulative effects that implementation of the SHA could have on endangered and threatened species;
2. Other reasonable alternatives consistent with the purpose of the proposed SHA as described above, and their associated effects;
3. Measures that would minimize and mitigate potentially adverse effects of the proposed action;
4. Identification of any impacts on the human environment that should have been analyzed in the draft EA pursuant to NEPA;
5. Other plans or projects that might be relevant to this action;
6. The proposed term of the Permit and whether the proposed SHA would provide a net conservation benefit to the spotted owl; and
7. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that

your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we used in preparing the draft EA, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

We will evaluate the draft SHA, associated documents, and any public comments we receive to determine whether the Permit application and the EA meet the requirements of section 10(a)(1)(A) of the ESA and NEPA, respectively, and their respective implementing regulations. We will also evaluate whether issuance of a Permit would comply with section 7(a)(2) of the ESA by conducting an intra-Service section 7 consultation on the proposed Permit action. If we determine that all requirements are met, we will sign the proposed SHA and issue a Permit under section 10(a)(1)(A) of the ESA to the applicant, the Weyerhaeuser Company, for incidental take of the northern spotted owl caused by covered activities implemented in accordance with the terms of the Permit and the SHA. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments and information we receive during the public comment period.

Authority

We provide this notice pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*), its implementing regulations (50 CFR 17.22), and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: February 3, 2016.

**Theresa Rabot,
Deputy Regional Director,
Pacific Region, U. S. Fish and Wildlife Service,
Portland, Oregon.**

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